IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No. 23683 OF 2001

Date:21.07.2006

BETWEEN:

Elkathurthy Large Sized Cooperative Society,
Rep. By its Secretary Mr. E. Samaiah.

…. PETITIONER

And

1. Government of Andhra Pradesh, Cooperation Department, rep. By its Secretary, Secretariat, Hyderabad, and others.

…. RESPONDENTS

ORDER:

The facts are not much in dispute. It seems the sixth respondent was the President of the petitioner-society during the years 1975 to 1982. Pursuant to the enquiry conducted under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'), it came to light that the sixth respondent has committed certain irregularities and misappropriated the funds of the society. On the basis of enquiry under Section 51 of the Act by giving opportunity to the sixth respondent, surcharge proceedings dated 5.4.1984 were passed against him. Aggrieved by the same, the sixth respondent filed C.T.A.No.8 of 1984. However, the said CTA was allowed on the ground of violation of principles of natural justice and remanded the matter to the Surcharge Authority for deciding afresh, after giving opportunity to both the parties. However, after giving opportunity, the Surcharge Authority passed orders on 09.08.1991 holding that the sixth respondent is liable for irregularities and misappropriation of certain amounts. Aggrieved by the same, he filed CTA No.665 of 1996 before the Cooperative Tribunal, Hyderabad. The Cooperative Tribunal, Hyderabad, on considering the order passed by the Surcharge Authority and on hearing both the parties, allowed the appeal setting aside the order passed by the Deputy Registrar of the Cooperative Societies, Karimnagar by holding that in this case a second enquiry (*de novo*) was conducted under Section 51 of the Act,

which amounts to double jeopardy, and as such, the enquiry proceeded under

Section 60 of the Act by the Surcharge Authority is arbitrary and illegal. It was further held that the Deputy Registrar of Cooperative Societies, Karimnagar can take action as is available to him under law, by placing reliance on the decision rendered by a Division Bench of this Court in **Primary Agricultural Cooperative Society, rep. by its president S. Ranga Reddy v. B. Malla Reddy**[1]**.** Aggrieved by the same, the present writ petition is filed.

In nutshell the order passed by the Tribunal in CTA No.665 of 1996 dated 15.10.1998 is to the effect that the authorities are at liberty to cause fresh enquiry under Section 60 of the Act on the basis of the first enquiry conducted under Section 51 of the Act.

The learned counsel for the respondents strenuously contended that the question of conducting *de novo* enquiry does not arise. It is on the basis of the letter addressed by the District Collector asking the Enquiry Officer to enquire into a particular angle of the matter, which did not find place in the first enquiry. Therefore, the question of setting aside the second enquiry on the ground of double jeopardy does not arise, and such a sweeping statement cannot be made. Be that as it may, in view of the judgment reported in **Primary Agricultural Cooperative Society's** case (supra), it is always open for the authority either to accept the enquiry report or to reject the same while conducting enquiry under Section 60 of the Act.

There is no necessity of going into the fact whether the Tribunal was right in setting aside the second enquiry or not.

Suffice it to hold that the authorities are entitled to proceed with the matter under Section 60 of the Act on the basis of the first enquiry made under Section 51 of the Act, and decide the matter as per law after putting the petitioner on notice and hearing him personally.

With the above clarification, the Writ Petition is dismissed. No order as to costs.

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(C.V. Ramulu, J.)

21st July, 2006
Js.

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[1] 1996 (3) ALT 488